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ABSTRACT

This annual report on the Age Discrimination in Employment Act describes activities conducted under the Act in 1969. The Act prohibits discrimination in any of the terms of employment against individuals between 40 and 65 years of age. Coverage is extended to employers of 25 or more persons in occupations for which age is not a bona fide qualification necessary to the conduct of business, and to employment agencies and labor organizations dealing with covered employers. Appendixes to the report contain federal regulations on record keeping and summaries of applicable State laws. (BH)

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AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967

A report covering activities in connection with the Act during 1969

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Submitted to the Congress – 1970

In Accordance With Section 13 of the Act

VT012286

U.S. DEPARTMENT OF LABOR
Wage and Labor Standards Administration
Wage and Hour and Public Contracts Divisions

ED052320

Letter of Transmittal

Washington, D. C. January 30, 1970

The Honorable the PRESIDENT OF THE SENATE
The Honorable the SPEAKER OF THE HOUSE OF REPRESENTATIVES

Sirs:

I have the honor to present herewith the January 1970 report pertaining to activities in connection with the Age Discrimination in Employment Act of 1967, as required by section 13 of the statute.

Respectfully,

George P. Shultz
Secretary of Labor

PREFACE

This study is in response to section 13 of the Age Discrimination in Employment Act of 1967 (P.L. 90-202) which directs the Secretary of Labor to submit annually in January to the Congress a report covering his activities for the previous year.

This report was prepared in the Office of Research and Legislative Analysis, Wage and Hour and Public Contracts Divisions under the direction of Irwin M. Wolkow.

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ACT OF 1967

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REPORT OF THE SECRETARY OF LABOR

I. Introduction

Section 13 of the Age Discrimination in Employment Act of 1967 (ADEA) directs the Secretary of Labor to submit an annual report to the Congress in January covering his activities of the previous year, including an evaluation and appraisal of the effect of the minimum and maximum ages established by the Act and any recommendations for further legislation. This report is presented in accordance with this legislative requirement.

II. Background

As directed by Title VII of the Civil Rights Act of 1964, a study was undertaken by the Department of Labor to explore the problems of discrimination in employment because of age. This study revealed that middle-aged and older persons were at a serious disadvantage in obtaining employment, in receiving training or being promoted, in keeping jobs once hired, and that the rate of unemployment--especially long-term unemployment--was higher among such persons than among workers generally. 1/ It was also shown that arbitrary age limits were frequently set for jobs where the age of the individual was not relevant to job requirements.

In the 1966 Amendments to the Fair Labor Standards Act, Congress directed the Secretary of Labor to submit specific proposals for legislation which would promote the employment of the older worker on the basis of ability rather than age, and which would prohibit arbitrary age discrimination in employment. Subsequently, in January 1967 the President recommended that the Congress enact such a law and the Secretary transmitted a draft proposal to the Congress a month later. The ADEA was enacted on December 15, 1967 and became effective on June 12, 1968.

III. Provisions of the Age Discrimination in Employment Act

The ADEA prohibits discrimination in employment on the basis of age in matters of hiring, job retention, compensation, and other terms, conditions, or privileges of employment. Most employers 2/ of 25 or more persons are subject to the Act's prohibitions, as are public and private employment agencies serving such employers. Labor

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1/ The Older American Worker - Age Discrimination in Employment, Report of the Secretary of Labor to the Congress under Section 715 of the Civil Rights Act of 1964, June 1965.

2/ The term "employer" does not include Federal, State, or local governments.

organizations having 25 or more members, or which refer persons for employment to covered employers, or which represent the employees of covered employers, are also subject to the provisions of the statute.

Protection under the Act is limited to individuals who are over 40 years of age until the 65th birthday. Age 40 was selected as the lower age limit since that appeared to be the age at which discrimination generally became apparent, and also because it is the lower limit set in most State age discrimination laws. The 65-year upper limit was specified because it is a common retirement age in American industry.

Covered employers, employment agencies, or labor organizations, are not permitted to use printed or published notices or advertisements relating to employment which indicate any preference, limitation, specification, or discrimination based on age.

Certain exceptions from the Act's prohibitions are provided. These relate to situations where age is a bona fide occupational qualification reasonably necessary to the normal operation of a particular business; where a differentiation is based on reasonable factors other than age; where the differentiation is caused by observing the terms of a bona fide seniority system or any bona fide employee benefit plan which is not a subterfuge to evade the purposes of the Act; or where the discharge of an individual is for good cause. The Act provides that no employee benefit plan shall excuse the failure to hire any individual.

Each employer, employment agency, or labor organization, covered by the law is required to post in a conspicuous place on its premises the official notice furnished by the Secretary of Labor which outlines the rights of individuals under the Act and provides information as to how to locate and contact the nearest office of the Wage and Hour and Public Contracts Divisions.

Enforcement procedures are similar to those of the Fair Labor Standards Act which the WHPC Divisions also enforce. The age discrimination law specifically requires that before any legal proceedings can be instituted, attempts must be made to eliminate discriminatory practices through informal methods of conference, conciliation, and persuasion. It is only after such attempts have failed that the civil remedies and recovery procedures of the FLSA are available for enforcement of the ADEA.

IV. Education and information activities

During the past year, the Wage and Hour and Public Contracts Divisions have been and are continuing to conduct an intensive information campaign about the ADEA through every available channel of communication. National newspaper, radio and television associations were sent information regarding the provisions of the Act and the types of employment advertising prohibited. In addition, the communications media were provided with specially prepared presentations concerning the Act. Included were color films, both short and long, which were shown on television and spot announcements for radio.

On numerous occasions in the past few months, these television spot films (30 seconds) have appeared between station breaks on network shows during "prime time". The estimated size of the viewing audience at any one of these times is numbered in the millions of persons. In addition, the local television stations in every major metropolitan area have also cooperated and have shown, as a public service, the brief films provided by the Divisions.

Field personnel as well as the national office staff have participated in business, labor, professional, educational and other organizational meetings in order to provide the broadest dissemination of information among employer and employee groups most likely to be affected.

The Divisions have also been placing new and added emphasis on the role private citizens' groups can play in reducing the age barriers to employment. Senior citizen and "older worker" groups which have a particular concern for the employment problems of those whom the Act protects have been asked to help in making the Divisions' pamphlets, posters, and other materials available not only to their own members but throughout their communities. Reports from regional and field offices reveal an ever-increasing demand for speakers at meetings of all kinds, and for copies of leaflets about the Act in both English and Spanish.

In fiscal 1969, more than 11,000 compliance contacts were initiated directly with employers to inform them of the provisions of the law and of their responsibility to comply. Such contacts in some cases opened employment opportunities to middle-aged and older workers, or corrected violative practices without need for enforcement action. Similar contacts were also made with employment agency and labor union representatives, in an effort to seek their active cooperation and to inform them of their responsibilities under the Act.

While much has been accomplished, a great deal still remains to be done in achieving compliance with the Act. Plans for the future include increased promotional activity and a conference to focus more attention on the problem of age discrimination in employment and ways to combat it.

V. Regulations and interpretations

During the past year, new sections were added to Title 29, Code of Federal Regulations, (Subchapter C of Chapter V), for the purpose of defining the recordkeeping and posting requirements under the Act, clarifying the Secretary of Labor's rulemaking authority, and providing additional interpretative guidelines.

Part 850 [RECORDS TO BE MADE OR KEPT RELATING TO AGE; NOTICES TO BE POSTED; ADMINISTRATIVE EXEMPTIONS], which was first published as temporary regulations in the Federal Register on May 24, 1968, was published in revised form as a new proposal on August 26, 1969, with a 30-day period provided for comment. The revised regulations, as adopted, appeared in the Federal Register on December 4, 1969, and are now effective. They specify the form and types of records which must be kept by employers, employment agencies and labor organizations, set forth the posting requirements, outline the procedures by which administrative exemptions may be requested, and include the details of such specific exemptions.

Although certain basic records such as the individual's name, address, date of birth and rate of pay, are required to be kept by employers for 3 years, the period of retention for records relating, among others, to hiring, training, promotion, physical examinations, and help-wanted advertisements, was reduced in the revised regulations to one year in general, and to 90 days in the case of temporary employees. Employment agencies and labor organizations must also keep on file, as required by the regulations, records which relate to their responsibilities under the Act, as specified.

Regulations, Part 850, was modified in June 1969 to include a specific exemption, granted under the Secretary's rulemaking authority, from all provisions of the Act for employment programs under Federal grants or contracts which are designed exclusively to promote job opportunities for the disadvantaged. Included in the exemption, for example, are such activities under the Manpower Development and Training Act and the Economic Opportunity Act.

Part 860 [INTERPRETATIONS] provides a practical guide to employers, employment agencies, labor organizations, and to persons protected by the Act, as to how the WHPC Divisions administer and enforce it. During 1969 two additional sections of these guidelines were published. These discuss the application of the Act to certain types of employee benefit and retirement programs, define the geographical scope of coverage and supplement certain subsections of the Interpretations as previously published.

Copies of the regulations and interpretations are included in Appendix A.

VI. Compliance activity

During the first few months of our experience under the new law, Wage-Hour compliance officers were instructed to schedule investigations concurrently with those made under the Fair Labor Standards Act and the other laws administered and enforced by the Divisions. After a careful study was made of this procedure, it appeared that violations of the Age Discrimination in Employment Act were more likely to occur in large business establishments which are generally in compliance with the Fair Labor Standards Act, rather than in smaller firms. Our compliance officers are therefore concentrating their efforts now in areas where there is clearly the greatest need.

More than 25,000 establishments were investigated in Fiscal 1969, the first full year of operation under the Act, to determine compliance with its provisions. Included in this number were special "directed" investigations which were arranged where there was evidence of discriminatory practices and where complaints were received. Overall, slightly less than 500 establishments were found in violation and corrective action was taken. The violations were concentrated among establishments investigated under the program of directed investigations and among those investigated as a result of complaints (Tables 1 and 2). Complaints are currently being received at a rate of approximately 100 per month and are promptly investigated.

The greatest number of violations, about half the total, related to illegal job advertising by employers as well as employment agencies. There were two other types of violations which occurred with some degree of frequency: (1) the refusal by employers to hire workers aged 40 to 65 on account of age; and (2) the failure of employment agencies to refer applicants in that age bracket.

Illegal employment advertising was the most frequent noncompliance practice found in directed investigations. Almost half of the violations found in complaint investigations involved the refusal to hire applicants on account of age (Table 3).

Violations appeared to be slightly more prevalent in the southern regions, where 2.5 percent of all investigated establishments were found in some form of noncompliance with the Act, compared to 1.6 percent in nonsouthern regions (Table 4).

As mentioned earlier, a major emphasis in the enforcement program is on obtaining voluntary compliance with the Act through informal methods of conciliation, conference, and persuasion. It is only after such attempts have failed that the civil remedies and recovery procedures of the FLSA are available for enforcement of the age discrimination law.

Efforts at conciliation have so far been generally successful, although legal action is presently under consideration in some cases. In the year just ended it was necessary to file only one lawsuit under the Act. In this instance the Secretary of Labor, after all efforts to achieve voluntary compliance had failed, asked the Federal District Court in Chicago for a permanent injunction to restrain a transportation firm from violating the statute.

It is particularly gratifying to note that the amicable settlement of individual complaints of age discrimination at local branches of a number of large, nationally known businesses resulted in widespread voluntary compliance by these firms on a nationwide basis. These firms include a large telephone company, a steel company, a food processing firm, an insurance company, an auto manufacturer, two supermarket chains and two railroads.

Typical of individual complaints is the case of a 55-year old man who was denied employment as a warehouse worker because of his age. He had applied for the job in January 1968 (before the effective date of the ADEA) and again in July 1968 when he was told he was, at age 55, "too old for the work". In January 1969 he applied a third time, was denied employment and furnished a "short form application" which stated there were no vacancies. As a result of the Divisions' efforts, the company offered him a job and paid him $1,599 in back wages. In addition the company has since hired three other men over 40 years of age.

In another case a 59-year old couple was offered employment and received a check for more than $2,800 in back wages, because of the law and the Divisions' activities. They had applied to the district manager of a chain store organization for work at one of the stores, which are customarily managed by husband-and-wife teams. The district manager wrote in reply that their resume merited consideration, but it was company policy to hire only persons under 55 for these positions. When a representative of the WHPC Divisions noted the couple's resume was fully as impressive as those submitted by other applicants, a high official of the company reached for the telephone, made a long-distance call to the couple, and offered them a job.

In still another case, three snack-bar employees, one age 62, another 50, and another 55 were discharged by their employer on the basis that he

thought business would improve if younger employees were employed (in discussing the discharge with one of the employees, the employer stated he wanted to put "young chicks" to work). Confronted with the violation, the employer claimed the employees were discharged for inefficiency. The facts disclosed that the inefficiency claimed simply could not be substantiated. The employer also erred when he advertised for replacement employees between the ages of 21-35. There was a happy ending for the complainants. After the compliance officer pointed out the applicability of the ADEA to the employer, these three employees were offered their jobs back and received back wages amounting to over $4,300.

The Divisions have, as provided by the Act, supervised the financial restitution to persons who were denied either initial hiring, or certain job benefits for those who were already working. More importantly, however, in practically all such cases the work of the compliance officers in the field has insured future compliance with the ADEA which, in turn, has resulted in immeasurable benefits such as proper consideration for employment and promotion for a large segment of our workforce composed of persons age 40 to 65.

Similar cooperation has been shown by employment agencies and labor organizations, and also from a number of newspaper and magazine publishers throughout the country who have printed notices about the ADEA as a public service to the Divisions and to their help-wanted advertisers.

Reports were received from area offices of the Wage and Hour and Public Contracts Divisions concerning specified or implied age discrimination in help-wanted advertisements in each area. More than 125,000 employment advertisements in 141 newspapers published in 93 cities were reviewed. Fewer than one percent specified age limits in violation of the ADEA and about two percent implied age limits through the use of language such as "young man", "boy", "girl", "recent graduate", etc. About half of these ads using discriminatory language were inserted by employers who were probably covered under the ADEA (Tables 5 and 6).

VII. State age discrimination laws

During the last year, one additional State (New Mexico) has enacted a statute relating to age discrimination in employment. In addition, Maryland, Oregon, and Puerto Rico revised their existing age discrimination statutes. Maryland reduced the minimum age limitation specified from 45 to 18 years of age; Oregon expanded its coverage provisions by removing the exemption provided to employers of less than six employees; and Puerto Rico provided for stronger penalties against violators of its age discrimination statute.

With the addition of New Mexico, there are currently 27 States and Puerto Rico with age discrimination statutes in effect. The statutes in 16 of these States apply to employers, employment agencies and labor organizations; eight of these 16 statutes also apply to employment by State and/or local governments. In eight additional States, the statutes apply only to employers or persons conducting business in the State. The statutes of two States (Illinois and Indiana) apply to employers, labor organizations and State government employment, but exclude employment agencies; while the Texas statute applies only to employment by the State and its political subdivisions.

The age discrimination laws in three of the 27 jurisdictions do not specify age limitations, while about half of the remaining State laws extend protection to persons aged 40 to 65.

Unlawful employment practices specified in State laws range from refusal to hire or discharge because of age as a minimum prohibition, to a combination of these practices including discrimination in compensation, terms, conditions, or privileges of employment. Advertising or publishing or using application forms which suggest age limitations, and excluding or expelling or discriminating in any way by labor unions are some of the other prohibited practices listed by State in Appendix B.

VIII. Appraisal of age composition and other matters

Despite the forecast of a declining trend in the proportion of persons in the 40 to 65 year age group during the coming years, they will continue to represent a sizeable segment of the labor force (Tables 7 and 8). The fact that the age composition of the population has not changed appreciably since the Act became effective combined with the experience gained in matters covered by the statute have led to the conclusion that a recommendation regarding further legislation would not be appropriate at this time.

In the first report under section 13 of the Act, which was submitted to the Congress in January 1969, it was indicated that the Divisions were considering plans to make specific studies of three industries--air transportation, banking, and electrical machinery and equipment manufacturing--where there was a markedly lower percentage of employees 45 years and older than is true of employment in general.1/ Data available from secondary sources, including some unpublished material, were thoroughly researched, but no useful data could be found. It was not possible to obtain the additional resources necessary to design and carry out a survey yielding primary data.

1/ This statement was based on tabulation of data from the 1960 Census of Population.

Table 1. Number of establishments investigated under the Age Discrimination in Employment Act by compliance status and type of investigation, June 21, 1968 - June 20, 1969

Type of investigation	Number of establishments		
	Investigated under ADEA	Found in compliance with ADEA	Found in noncompliance with ADEA
Total	25,291	24,765	497
ADEA complaint	662	445	201
ADEA directed	345	150	182
Other programs a/	24,284	24,170	114

a/ Excludes investigations of establishments not covered under ADEA.

Source: Wage and Hour and Public Contracts Divisions.

Table 2. Number of establishments investigated under the Age Discrimination in Employment Act by compliance status and type of investigation, by region and area, June 21, 1968 - June 20, 1969

Region and area	Total investigated under ADEA				Not covered under ADEA			In compliance with ADEA				Not in compliance with ADEA			
	Total	ADEA complaint	ADEA directed	Other programs a/	Total	ADEA complaint	ADEA directed	Total	ADEA complaint	ADEA directed	Other programs	Total	ADEA complaint	ADEA directed	Other programs
All regions	25,291	662	345	24,284	29	16	13	24,765	445	150	24,170	497	201	182	114
Southern	10,301	277	117	9,907	9	4	5	10,034	164	27	9,843	258	109	85	64
Atlanta	3,112	82	28	3,002	5	2	3	3,031	46	4	2,931	76	34	21	21
Birmingham	1,838	45	11	1,782	0	0	0	1,804	27	3	1,774	34	18	8	8
Dallas	2,883	53	41	2,789	1	0	1	2,812	36	5	2,771	70	17	35	18
Nashville	2,468	97	37	2,334	3	2	1	2,387	55	15	2,317	78	40	21	17
Nonsouthern	14,990	385	228	14,377	20	12	8	14,731	281	123	14,237	239	92	97	50
Boston	1,122	11	27	1,084	0	0	0	1,112	10	18	1,084	10	1	9	0
Chicago	3,093	112	36	2,945	7	3	4	3,039	83	15	2,941	47	26	17	4
Kansas City	1,942	52	58	1,832	4	1	3	1,864	36	30	1,798	74	15	25	34
New York City	3,871	39	65	3,767	2	2	0	3,839	32	41	3,766	30	5	24	1
Philadelphia	1,593	34	28	1,531	0	0	0	1,574	29	19	1,526	19	5	9	5
San Francisco	2,429	120	3	2,306	5	5	0	2,387	83	0	2,304	37	32	3	2
Caribbean	940	17	11	912	2	1	1	916	8	0	908	22	8	10	4

a/ Excludes investigations of establishments not covered under ADEA.

Source: Wage and Hour and Public Contracts Divisions

Table 3. Number of establishments in noncompliance with the Age Discrimination in Employment Act by type of investigation and noncompliance practice, June 21, 1968 - June 20, 1969

Degree of noncompliance and type of investigation	Unduplicated total number of establishments not in compliance with ADEA	Noncompliance practice: By employers: Refusal to hire	By employers: Discharged	By employers: Promotional bars	By employers: Terms and conditions of employment	By employers: Illegal employment advertising	By employers: Other	By employment agencies: Failure to refer	By employment agencies: Illegal employment advertising	By employment agencies: Other	By labor organizations: Exclusion	By labor organizations: Bars to referral	By labor organizations: Other
1. Total in noncompliance	497	159	12	17	22	231	34	31	88	41	2	2	1
a. ADEA complaint	201	97	10	10	15	50	20	17	31	9	2	2	1
b. ADEA directed	132	31	0	2	3	125	10	19	33	12	0	0	0
c. Other programs	114	31	2	3	4	56	4	15	24	20	0	0	0
2. Noncompliance and agreement to correct	493	76	2	4	11	222	20	39	86	27	2	1	1
a. ADEA complaint	186	58	2	3	7	49	11	14	31	7	2	1	1
b. ADEA directed	197	9	0	0	2	120	7	16	33	10	0	0	0
c. Other programs	110	11	0	1	2	53	2	9	22	10	0	0	0
3. Noncompliance and refusal to correct	36	14	8	1	2	5	1	2	2	0	0	1	0
a. ADEA complaint	23	11	8	0	2	0	1	0	0	0	0	1	0
b. ADEA directed	3	1	0	0	0	2	0	0	0	0	0	0	0
c. Other programs	10	2	0	1	0	3	0	2	2	0	0	0	0
4. Possible future noncompliance	131	67	2	12	9	4	13	10	0	14	0	0	0
a. ADEA complaint	55	28	0	7	6	1	8	3	0	2	0	0	0
b. ADEA directed	35	21	0	2	1	3	3	3	0	2	0	0	0
c. Other programs	41	18	2	3	2	0	2	4	0	10	0	0	0

Note: One establishment can appear in two or more "Noncompliance practice" columns and in each of Items 1-4.

Source: Wage and Hour and Public Contracts Divisions

Table 4. Number of establishments investigated under ADEA and percent found not in compliance by type of investigation, region and area, June 21, 1968 - June 20, 1969

Region and area	Number of establishments investigated				Percent not in compliance			
	Total number	ADEA complaint	ADEA directed	Other a/ programs	Total	ADEA complaint	ADEA directed	Other a/ programs
All regions	25,291	662	345	24,284	2.0	30.4	52.8	0.5
Southern	10,301	277	117	9,907	2.5	39.4	72.6	0.6
Atlanta	3,112	82	28	3,002	2.4	41.5	75.0	0.7
Birmingham	1,838	45	11	1,782	1.8	40.0	72.7	0.4
Dallas	2,883	53	41	2,789	2.4	32.1	85.4	0.6
Nashville	2,468	97	37	2,334	3.2	41.2	56.8	0.7
Nonsouthern	14,990	385	228	14,377	1.6	23.9	42.5	0.3
Boston	1,122	11	27	1,084	0.9	9.1	33.3	-
Chicago	3,093	112	36	2,945	1.5	23.2	47.2	0.1
Kansas City	1,942	52	58	1,832	3.8	28.8	43.1	1.9
New York City	3,871	39	65	3,767	0.8	12.8	36.9	b/
Philadelphia	1,593	34	28	1,531	1.2	14.7	32.1	0.3
San Francisco	2,429	120	3	2,306	1.5	26.7	100.0	0.1
Puerto Rico	940	17	11	912	2.3	47.1	90.9	0.4

a/ Excludes investigations of establishments not covered under ADEA.

b/ Less than .05 percent.

Source: Wage and Hour and Public Contracts Divisions.

Table 5. Number of classified help-wanted newspaper advertisements using language considered discriminatory under the Age Discrimination in Employment Act, by region and area, October 26, 1969

Region and area	Number of newspapers reviewed	Number of cities	Number of employment advertisements	Number using language which indicates possible age discrimination			
				Total		Specified age limits	Implied age limits
				Covered and not covered	Probably covered		
All regions	141	93	125,397	3,803	1,941	1,027	2,776
Southern	48	40	30,689	1,191	470	389	802
Atlanta	13	12	10,885	445	116	149	296
Birmingham	10	8	4,052	150	96	50	100
Dallas	16	11	11,437	450	153	142	308
Nashville	9	9	4,315	146	105	48	98
Nonsouthern	93	53	94,708	2,612	1,471	638	1,974
Boston	9	6	5,576	147	69	9	138
Chicago	16	12	18,001	1,075	726	229	846
Kansas City	12	8	8,909	567	264	211	356
New York	20	8	27,508	109	79	1	108
Philadelphia	9	6	11,899	108	55	13	95
San Francisco	23 a/	11	22,404	581	268	175	406
Puerto Rico	4	2	411	25	10	0	25

a/ Number includes both the Los Angeles and Hollywood editions of the Los Angeles Times and the Los Angeles Herald Examiner.

Source: Wage and Hour and Public Contracts Divisions.

Table 6. Percent of classified help-wanted newspaper advertisements using language considered discriminatory under the Age Discrimination in Employment Act, by region and area, October 26, 1969

Region and area	All advertisements					Discriminatory advertisements			
		Percent using discriminatory language					Percent		
	Number	All	Specified age limits	Implied age limits	Probably covered	Number	Specified age limits	Implied age limits	Probably covered
All regions	125,397	3.0	0.8	2.2	1.5	3,803	27.0	73.0	51.0
Southern	30,689	3.9	1.3	2.6	1.5	1,191	32.7	67.3	39.5
Atlanta	10,885	4.1	1.4	2.7	1.1	445	33.5	66.5	26.1
Birmingham	4,052	3.7	1.2	2.5	2.4	150	33.3	66.7	64.0
Dallas	11,437	3.9	1.2	2.7	1.3	450	31.6	68.4	34.0
Nashville	4,315	3.4	1.1	2.3	2.4	146	32.9	67.1	71.9
Nonsouthern	94,708	2.8	0.7	2.1	1.6	2,612	24.4	75.6	56.3
Boston	5,576	2.6	0.1	2.5	1.2	147	6.1	93.9	46.9
Chicago	18,001	6.0	1.3	4.7	4.0	1,075	21.3	78.7	67.5
Kansas City	8,909	6.4	2.4	4.0	3.0	567	37.2	62.8	46.6
New York	27,508	0.4	-	0.4	0.3	109	0.9	99.1	72.5
Philadelphia	11,899	0.9	0.1	0.8	0.5	108	12.0	88.0	50.9
San Francisco	22,404	2.6	0.8	1.8	1.2	581	30.1	69.9	46.1
Puerto Rico	411	6.1	-	6.1	2.4	25	-	100.0	40.0

Source: Wage and Hour and Public Contracts Divisions.

Table 7. Number and percent of persons in civilian labor force age 16 years and over, by specified age groups, September 1969

Age groups	Civilian labor force	
	Number (000)	Percent
Total	80,985	100.0
Under 40 years	40,824	50.4
40 to 65 years	36,860	45.5
65 years and over	3,301	4.1

Source: Employment and Earnings, Bureau of Labor Statistics, October 1969

Table 8. Estimates of the population of the United States, age 25 years and over, by specified age groups, 1966 to 1985

Age groups	1966		1970		1975		1985	
	Number (000)	Percent	Number (000)	Percent	Number (000)	Percent	Number (000)	Percent
Total	104,839	100.0	109,677	100.0	118,404	100.0	140,003	100.0
Under 40 years	36,356	34.7	36,376	33.2	42,887	36.2	58,201	41.6
40 to 65 years	52,028	49.6	53,716	49.0	54,358	45.9	56,824	40.6
65 years and over	16,455	15.7	19,585	17.8	21,159	17.9	24,978	17.8

Source: Population Estimates, Summary of Demographic Projections, U. S. Bureau of Census, March 14, 1968, pp. 38-39.

APPENDIX A

12/4/69

U.S. DEPARTMENT OF LABOR
WAGE AND LABOR STANDARDS ADMINISTRATION
WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS

PART 850 (29 CFR) – RECORDS TO BE MADE OR KEPT RELATING TO AGE; NOTICES TO BE POSTED; ADMINISTRATIVE EXEMPTIONS

(Reprinted from the Federal Register of December 4, 1969)

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

SUBCHAPTER C—AGE DISCRIMINATION IN EMPLOYMENT

PART 850—RECORDS TO BE MADE OR KEPT RELATING TO AGE; NOTICES TO BE POSTED; ADMINISTRATIVE EXEMPTIONS

Change in Recordkeeping Requirements

On August 26, 1969, there was published in the FEDERAL REGISTER (34 F.R. 13666) notice of a proposal to revise Part 850 of Title 29, Code of Federal Regulations, in order to change the temporary recordmaking and recordkeeping requirements promulgated under the Age Discrimination in Employment Act of 1967 (29 U.S.C. 629) and section 11 of the Fair Labor Standards Act of 1938 (29 U.S.C. 211).

Interested persons were invited to submit written data, views, or argument. After consideration of all relevant matter presented, and pursuant to section 7 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 629) and section 11 of the Fair Labor Standards Act of 1938 (29 U.S.C. 211), and Secretary of Labor's Orders No. 10–68 (33 F.R. 9729) and No. 11–68 (33 F.R. 9690), the revision as so proposed is hereby adopted, subject to the following changes:

1. In subparagraph (2) of § 850.3(b), the first sentence is deleted and the following sentence is inserted in its place: "Every employer shall keep on file any employee benefit plans such as pension and insurance plans, as well as copies of any seniority systems and merit systems which are in writing, for the full period the plan or system is in effect, and for at least 1 year after its termination."

2. In § 850.16, The first two sentences are designated as paragraph (a).

3. In § 850.16, The words "paragraph (b) of this section" in the first sentence are changed to "§ 850.15(b) of this part".

4. In § 850.16, The word "provisions" in the first sentence is changed to "prohibitions".

5. In § 850.16, The following paragraph is added and designated as paragraph (b):

(b) Any employer, employment agency, or labor organization the activities of which are exempt from the prohibitions of the Act under paragraph (a) of this section shall maintain and preserve records containing the same information and data that is required of employers, employment agencies, and labor organizations under §§ 850.3, 850.4, and 850.5, respectively.

This revision shall become effective 30 days following the date of its publication in the FEDERAL REGISTER.

Signed at Washington, D.C., this 26th day of November 1969.

ROBERT D. MORAN,
Administrator, Wage and Hour and Public Contracts Divisions.

PART 850—RECORDS TO BE MADE OR KEPT RELATING TO AGE; NOTICES TO BE POSTED; ADMINISTRATIVE EXEMPTIONS

Subpart A—General

Sec.
850.1 Purpose and scope.

Subpart B—Records To Be Made or Kept Relating to Age; Notices To Be Posted

850.2 Forms of records.
850.3 Records to be kept by employers.
850.4 Records to be kept by employment agencies.
850.5 Records to be kept by labor organizations.
850.6 Availability of records for inspection.
850.7 Transcriptions and reports.
850.8–850.9 [Reserved]
850.10 Notices to be posted.
850.11 Petitions for recordkeeping exceptions.

Subpart C—Administrative Exemptions

Sec.
850.15 Administrative exemptions; procedures.
850.16 Specific exemptions.

AUTHORITY: The provisions of this Part 850 issued under sec. 7, 81 Stat. 604; 29 U.S.C. 626; sec. 11, 52 Stat. 1066, as amended, 29 U.S.C. 211.

Subpart A—General

§ 850.1 Purpose and scope.

(a) Section 7 of the Age Discrimination in Employment Act of 1967 (hereinafter referred to in this part as the Act) empowers the Secretary of Labor to require the keeping of records which are necessary or appropriate for the administration of the Act in accordance with the powers contained in section 11 of the Fair Labor Standards Act of 1938. Subpart B of this part sets forth the recordkeeping and posting requirements which are prescribed by the Secretary of Labor for employers, employment agencies, and labor organizations which are subject to the Act. Reference should be made to section 11 of the Act for definitions of the terms "employer", "employment agency", and "labor organization". General interpretations of the Act and of this part are published in Part 860 of this chapter. This part also reflects pertinent delegations of the Secretary of Labor's duties to the Administrator of the Wage and Hour and Public Contracts Divisions.

(b) Subpart C of this part sets forth the Department of Labor's rules under section 9 of the Act providing that the Secretary of Labor may establish reasonable exemptions to and from any or all provisions of the Act as he may find necessary and proper in the public interest.

Subpart B—Records To Be Made or Kept Relating to Age; Notices To Be Posted

§ 850.2 Forms of records.

No particular order or form of records is required by the regulations in this Part 850. It is required only that the records contain in some form the information specified. If the information required is available in records kept for other purposes, or can be obtained readily by recomputing or extending data recorded in some other form, no further records are required to be made or kept on a routine basis by this Part 850.

§ 850.3 Records to be kept by employers.

(a) Every employer shall make and keep for 3 years payroll or other records for each of his employees which contain:

(1) Name;
(2) Address;
(3) Date of birth;
(4) Occupation;
(5) Rate of pay, and
(6) Compensation earned each week.

(b)(1) Every employer who, in the regular course of his business, makes, obtains, or uses, any personnel or employment records related to the following, shall, except as provided in subparagraphs (3) and (4) of this paragraph, keep them for a period of 1 year from the date of the personnel action to which any records relate:

(i) Job applications, resumes, or any other form of employment inquiry whenever submitted to the employer in response to his advertisement or other

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notice of existing or anticipated job openings, including records pertaining to the failure or refusal to hire any individual,

(ii) Promotion, demotion, transfer, selection for training, layoff, recall, or discharge of any employee,

(iii) Job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings,

(iv) Test papers completed by applicants or candidates for any position which disclose the results of any employer-administered aptitude or other employment test considered by the employer in connection with any personnel action,

(v) The results of any physical examination where such examination is considered by the employer in connection with any personnel action,

(vi) Any advertisements or notices to the public or to employees relating to job openings, promotions, training programs, or opportunities for overtime work.

(2) Every employer shall keep on file any employee benefit plans such as pension and insurance plans, as well as copies of any seniority systems and merit systems which are in writing, for the full period the plan or system is in effect, and for at least 1 year after its termination. If the plan or system is not in writing, a memorandum fully outlining the terms of such plan or system and the manner in which it has been communicated to the affected employees, together with notations relating to any changes or revisions thereto, shall be kept on file for a like period.

(3) In the case of application forms and other preemployment records of applicants for positions which are, and are known by applicants to be, of a temporary nature, every record required to be kept under subparagraph (1) of this paragraph shall be kept for a period of 90 days from the date of the personnel action to which the record relates.

(4) When an enforcement action is commenced under section 7 of the Act regarding a particular applicant or employee, the Administrator may require the employer to retain any record required to be kept under subparagraph (1), (2), or (3) of this paragraph which is relative to such action until the final disposition thereof.

§ 850.4 Records to be kept by employment agencies.

(a)(1) Every employment agency which, in the regular course of its business, makes, obtains, or uses, any records related to the following, shall, except as provided in subparagraphs (2) and (3) of this paragraph, keep them for a period of 1 year from the date of the action to which the records relate:

(i) Placements;

(ii) Referrals, where an individual is referred to an employer for a known or reasonably anticipated job opening;

(iii) Job orders from employers seeking individuals for job openings;

(iv) Job applications, resumes, or any other form of employment inquiry or record of any individual which identifies his qualifications for employment, whether for a known job opening at the time of submission or for future referral to an employer;

(v) Test papers completed by applicants or candidates for any position which disclose the results of any agency-administered aptitude or other employment test considered by the agency in connection with any referrals;

(vi) Advertisements or notices relative to job openings.

(2) In the case of application forms and other preemployment records of applicants for positions which are, and are known by applicants to be, of a temporary nature, every record required to be kept under subparagraph (1) of this paragraph shall be kept for a period of 90 days from the date of the making or obtaining of the record involved.

(3) When an enforcement action is commenced under section 7 of the Act regarding a particular applicant, the Administrator may require the employment agency to retain any record required to be kept under subparagraph (1) or (2) of this paragraph which is relative to such action until the final disposition thereof.

(b) Whenever an employment agency has an obligation as an "employer" or a "labor organization" under the Act, the employment agency must also comply with the recordkeeping requirements set forth in § 850.3 or § 850.5, as appropriate.

§ 850.5 Records to be kept by labor organizations.

(a) Every labor organization shall keep current records identifying its members by name, address, and date of birth.

(b) Every labor organization shall, except as provided in paragraph (c) of this section, keep for a period of 1 year from the making thereof, a record of the name, address, and age of any individual seeking membership in the organization. An individual seeking membership is considered to be a person who files an application for membership or who, in some other manner, indicates a specific intention to be considered for membership, but does not include any individual who is serving for a stated limited probationary period prior to permanent employment and formal union membership. A person who merely makes a inquiry about the labor organization or, for example, about its general program, is not considered to be an individual seeking membership in a labor organization.

(c) When an enforcement action is commenced under section 7 of the Act regarding a labor organization, the Administrator may require the labor organization to retain any record required to be kept under paragraph (b) of this section which is relative to such action until the final disposition thereof.

(d) Whenever a labor organization has an obligation as an "employer" or as an "employment agency" under the Act, the labor organization must also comply with the recordkeeping requirements set forth in § 850.3 or § 850.4, as appropriate.

§ 850.6 Availability of records for inspection.

(a) *Place records are to be kept.* The records required to be kept by this part shall be kept safe and accessible at the place of employment or business at which the individual to whom they relate is employed or has applied for employment or membership, or at one or more established central recordkeeping offices.

(b) *Inspection of records.* All records required by this part to be kept shall be made available for inspection and transcription by authorized representatives of the Administrator during business hours generally observed by the office at which they are kept or in the community generally. Where records are maintained at a central recordkeeping office pursuant to paragraph (a) of this section, such records shall be made available at the office at which they would otherwise be required to be kept within 72 hours following request from the Administrator or his authorized representative.

§ 850.7 Transcriptions and reports.

Every person required to maintain records under the Act shall make such extension, recomputation or transcriptions of his records and shall submit such reports concerning actions taken and limitations and classifications of individuals set forth in records as the Administrator or his authorized representative may request in writing.

§§ 850.8—850.9 [Reserved]

§ 850.10 Notices to be posted.

Every employer, employment agency, and labor organization which has an obligation under the Age Discrimination in Employment Act of 1967 shall post and keep posted in conspicuous places upon its premises the notice pertaining to the applicability of the Act prescribed by the Secretary of Labor or his authorized representative. Such a notice must be posted in prominent and accessible places where it can readily be observed by employees, applicants for employment and union members.

§ 850.11 Petitions for recordkeeping exceptions.

(a) *Submission of petitions for relief.* Each employer, employment agency, or labor organization who for good cause wishes to maintain records in a manner other than required in this part, or to be relieved of preserving certain records for the period or periods prescribed in this part, may submit in writing a petition to the Administrator requesting such relief setting forth the reasons therefor and proposing alternative recordkeeping or record-retention procedures.

(b) *Action on petitions.* If, on review of the petition and after completion of any necessary or appropriate investi-

gation supplementary thereto, the Administrator shall find that the alternative procedure proposed, if granted, will not hamper or interfere with the enforcement of the Act, and will be of equivalent usefulness in its enforcement, the Administrator may grant the petition subject to such conditions as he may determine appropriate and subject to revocation. Whenever any relief granted to any person is sought to be revoked for failure to comply with the conditions of the Administrator, that person shall be notified in writing of the facts constituting such failure and afforded an opportunity to achieve or demonstrate compliance.

(c) *Compliance after submission of petitions.* The submission of a petition or any delay of the Administrator in acting upon such petition shall not relieve any employer, employment agency, or labor organization from any obligations to comply with this part. However, the Administrator shall give notice of the denial of any petition with due promptness.

Subpart C—Administrative Exemptions

§ 850.15 Administrative exemptions; procedures.

(a) Section 9 of the Act provides that, "In accordance with the provisions of subchapter II of chapter 5, of title 5, United States Code, the Secretary of Labor * * * may establish such reasonable exemptions to and from any or all provisions of this Act as he may find necessary and proper in the public interest."

(b) The authority conferred on the Secretary by section 9 of the Act to establish reasonable exemptions will be exercised with caution and due regard for the remedial purpose of the statute to promote employment of older persons based on their ability rather than age and to prohibit arbitrary age discrimination in employment. Administrative action consistent with this statutory purpose may be taken under this section, with or without a request therefor, when found necessary and proper in the public interest in accordance with the statutory standards. No formal procedures have been prescribed for requesting such action. However, a reasonable exemption from the Act's provisions will be granted only if it is decided, after notice published in the FEDERAL REGISTER giving all interested persons an opportunity to present data, views, or arguments, that a strong and affirmative showing has been made that such exemption is in fact necessary and proper in the public interest. Request for such exemption shall be submitted in writing to the Administrator.

§ 850.16 Specific exemptions.

(a) Pursuant to the authority contained in section 9 of the Act and in accordance with the procedure provided therein and in § 850.15(b) of this part, it has been found necessary and proper in the public interest to exempt from all prohibitions of the Act all activities and programs under Federal contracts or grants, or carried out by the public employment services of the several States, designed exclusively to provide employment for, or to encourage the employment of, persons with special employment problems, including employment activities and programs under the Manpower Development and Training Act of 1962, as amended, and the Economic Opportunity Act of 1964, as amended, for persons among the long-term unemployed, handicapped, members of minority groups, older workers, or youth. Questions concerning the application of this exemption shall be referred to the Administrator for decision.

(b) Any employer, employment agency, or labor organization the activities of which are exempt from the prohibitions of the Act under paragraph (a) of this section shall maintain and preserve records containing the same information and data that is required of employers, employment agencies, and labor organizations under §§ 850.3, 850.4, and 850.5, respectively.

[F.R. Doc. 69-14434; Filed, Dec. 3, 1969; 8:50 a.m.]

U.S. DEPARTMENT OF LABOR
WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS

PART 860 (29 CFR) – INTERPRETATIONS

(Reprinted from the Federal Register of June 21, 1968)

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

SUBCHAPTER C—AGE DISCRIMINATION IN EMPLOYMENT

PART 860—INTERPRETATIONS

Pursuant to authority in the Age Discrimination in Employment Act of 1967 (29 U.S.C. 620), 5 U.S.C. 301, and in Secretary's Orders No. 10–68 and No. 11–68, there is hereby added to 29 CFR Chapter V, Subchapter C, a new part numbered 860 entitled "Interpretations", to read as set forth below.

These are interpretative rules, and are thus exempt from section 4 (a) and (c) of the Administrative Procedure Act (5 U.S.C. 533 (a) and (c)). I do not believe such procedure or delay will serve a useful purpose here. Accordingly, these rules will be effective immediately.

The new Part 860 reads as follows:

Sec.
860.1 Purpose of this part.
860.91 Age discrimination within the age bracket of 40–65.
860.92 Help wanted notices or advertisements.
860.102 Bona fide occupational qualifications.
860.103 Differentiations based on reasonable factors other than age.

AUTHORITY: The provisions of this part are issued under 81 Stat. 602; 29 U.S.C. 620, 5 U.S.C. 301, Secretary's Order No. 10–68, and Secretary's Order No. 11–68.

§ 860.1 Purpose of this part.

This part is intended to provide an interpretative bulletin on the Age Discrimination in Employment Act of 1967 like Subchapter B of this title relating to the Fair Labor Standards Act of 1938. Such interpretations of this Act are published to provide "a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it" (Skidmore v. Swift & Co., 323 U.S. 134, 138). These interpretations indicate the construction of the law which the Department of Labor believes to be correct, and which will guide it in the performance of its administrative and enforcement duties under the Act unless and until it is otherwise directed by authoritative decisions of the Courts or concludes, upon reexamination of an interpretation, that it is incorrect.

§ 860.91 Discrimination within the age bracket of 40–65.

(a) Although section 4 of the Act broadly makes unlawful various types of age discrimination by employers, employment agencies, and labor organizations, section 12 limits this protection to individuals who are at least 40 years of age but less than 65 years of age. Thus, for example it is unlawful in situations where this Act applies, for an employer to discriminate in hiring or in any other way by giving preference because of age to an individual 30 years old over another individual who is within the 40–65 age bracket limitation of section 12. Similarly, an employer will have violated the Act, in situations where it applies, when one individual within the age bracket of 40–65 is given job preference in hiring, assignment, promotion or any other term, condition, or privilege of employment, on the basis of age, over another individual within the same age bracket.

(b) Thus, if two men apply for employment to which the Act applies, and one is 42 and the other 52, the personnel officer or employer may not lawfully turn down either one on the basis of his age; he must make his decision on the basis of other factors, such as the capabilities and experience of the two individuals. The Act, however, does not restrain age discrimination between two individuals 25 and 35 years of age.

§ 860.92 Help wanted notices or advertisements.

(a) Section 4(e) of the Act prohibits "an employer, labor organization, or employment agency" from using printed or published notices or advertisements indicating any preference, limitation, specification, or discrimination, based on age.

(b) When help wanted notices or advertisements contain terms and phrases such as "age 25 to 35," "young," "boy," "girl," or others of a similar nature which indicate a preference for a particular age, range of ages, or for a young age group, such a term or phrase discriminates against the employment of older persons and is in violation of the Act, unless it comes within one of the exceptions, such as the one discussed in § 860.102.

(c) However, help wanted notices or advertisements which include a term or phrase such as "college graduate," or other educational requirement, or specify a minimum age less than 40, such as "not under 18," or "not under 21," are not prohibited by the statute.

(d) The use of the phrase "state age" in help wanted notices or advertisements is not, in itself, a violation of the statute. But because the request that an applicant state his age may tend to deter older applicants or otherwise indicate a discrimination based on age, employment notices or advertisements which include the phrase "state age," or any similar term, will be closel, scrutinized to assure that the request is for a permissible purpose and not for purposes proscribed by the statute.

(e) There is no provision in the statute which prohibits an individual seeking employment through advertising from specifying his own age.

§ 860.102 Bona fide occupational qualifications.

(a) Section 4(f)(1) of the Act provides that "It shall not be unlawful for an employer, employment agency, or labor organization * * * to take any action otherwise prohibited under subsections (a), (b), (c), or (e) of this section where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business * * *"

(b) Whether occupational qualifications will be deemed to be "bona fide" and "reasonably necessary to the normal operation of the particular business", will be determined on the basis of all the pertinent facts surrounding each particular situation. It is anticipated that this concept of a bona fide occupational qualification will have limited scope and application. Further, as this is an exception it must be construed narrowly, and the burden of proof in establishing that it applies is the responsibility of the employer, employment agency, or labor organization which relies upon it.

(c) The following are illustrations of possible bona fide occupational qualifications.

(d) Federal statutory and regulatory requirements which provide compulsory age limitations for hiring or compulsory retirement, without reference to the individual's actual physical condition at the terminal age, when such conditions are clearly imposed for the safety and

convenience of the public. This exception would apply, for example, to airline pilots within the jurisdiction of the Federal Aviation Agency. Federal Aviation Agency regulations do not permit airline pilots to engage in carrier operations, as pilots, after they reach age 60.

(e) A bona fide occupational qualification will also be recognized in certain special, individual occupational circumstances, e.g., actors required for youthful or elderly characterizations or roles, and persons used to advertise or promote the sale of products designed for, and directed to appeal exclusively to, either youthful or elderly consumers.

§ 860.103 Differentiations based on reasonable factors other than age.

(a) Section 4(f)(1) of the Act provides that "It shall not be unlawful for an employer, employment agency, or labor organization * * * to take any action otherwise prohibited under subsections (a), (b), (c), or (e) of this section * * * where the differentiation is based on reasonable factors other than age; * * *"

(b) No precise and unequivocal determination can be made as to the scope of the phrase "differentiation based on reasonable factors other than age." Whether such differentiations exist must be decided on the basis of all the particular facts and circumstances surrounding each individual situation.

(c) It should be kept in mind that it was not the purpose or intent of Congress in enacting this Act to require the employment of anyone, regardless of age, who is disqualified on grounds other than age from performing a particular job. The clear purpose is to insure that age, within the limits prescribed by the Act, is not a determining factor in making any decision regarding hiring, dismissal, promotion or any other term, condition or privilege of employment of an individual.

(d) The reasonableness of a differentiation will be determined on an individual, case by case basis, not on the basis of any general or class concept, with unusual working conditions given weight according to their individual merit.

(e) Further, in accord with a long chain of decisions of the Supreme Court of the United States with respect to other remedial labor legislation, all exceptions such as this must be construed narrowly, and the burden of proof in establishing the applicability of the exception will rest upon the employer, employment agency or labor union which seeks to invoke it.

(f) Where the particular facts and circumstances in individual situations warrant such a conclusion, the following factors are among those which may be recognized as supporting a differentiation based on reasonable factors other than age:

(1) (i) Physical fitness requirements based upon preemployment or periodic physical examinations relating to minimum standards for employment: *Provided, however,* That such standards are reasonably necessary for the specific work to be performed and are uniformly and equally applied to all applicants for the particular job category, regardless of age.

(ii) Thus, a differentiation based on a physical examination, but not one based on age, may be recognized as reasonable in certain job situations which necessitate stringent physical requirements due to inherent occupational factors such as the safety of the individual employees or of other persons in their charge, or those occupations which by nature are particularly hazardous: For example, iron workers, bridge builders, sandhogs, underwater demolition men, and other similar job classifications which require rapid reflexes or a high degree of speed, coordination, dexterity, endurance, or strength.

(iii) However, a claim for a differentiation will not be permitted on the basis of an employer's assumption that every employee over a certain age in a particular type of job usually becomes physically unable to perform the duties of that job. There is medical evidence, for example, to support the contention that such is generally not the case. In many instances, an individual at age 60 may be physically capable of performing heavy-lifting on a job, whereas another individual of age 30 may be physically incapable of doing so.

(2) Evaluation factors such as quantity or quality of production, or educational level, would be acceptable bases for differentiation when, in the individual case, such factors are shown to have a valid relationship to job requirements and where the criteria or personnel policy establishing such factors are applied uniformly to all employees, regardless of age.

(g) The foregoing are intended only as examples of differentiations based on reasonable factors other than age, and do not constitute a complete or exhaustive list or limitation. It should always be kept in mind that even in situations where experience has shown that most elderly persons do not have certain qualifications which are essential to those who hold certain jobs, some may have them even though they have attained the age of 60 or 64, and thus discrimination based on age is forbidden.

(h) It should also be made clear that a general assertion that the average cost of employing older workers as a group is higher than the average cost of employing younger workers as a group will not be recognized as a differentiation under the terms and provisions of the Act, unless one of the other statutory exceptions applies. To classify or group employees solely on the basis of age for the purpose of comparing costs, or for any other purpose, necessarily rests on the assumption that the age factor alone may be used to justify a differentiation—an assumption plainly contrary to the terms of the Act and the purpose of Congress in enacting it. Differentials so based would serve only to perpetuate and promote the very discrimination at which the Act is directed.

Signed at Washington, D.C., this 18th day of June 1968.

BEN P. ROBERTSON,
Acting Administrator.

[F.R. Doc. 68-7404; Filed, June 20, 1968; 8:51 a.m.]

U.S. DEPARTMENT OF LABOR

WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS

PART 860 (29 CFR) – INTERPRETATIONS

Miscellaneous Amendments

(Reprinted from the Federal Register of August 30, 1968)

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

SUBCHAPTER C—AGE DISCRIMINATION IN EMPLOYMENT

PART 860—INTERPRETATIONS

Miscellaneous Amendments

Pursuant to the Age Discrimination in Employment Act of 1967 (81 Stat. 602; 29 U.S.C. 620) and Secretary's Orders No. 10–68 (33 F.R. 9729) and No. 11–68 (33 F.R. 9690), 29 CFR Part 860 is hereby amended by adding thereto new §§ 860.50, 860.95, 860.105, and 860.110, to read as set forth below.

As these new sections contain only interpretative rules and are not substantive, subsections (b), (c), and (d) of 5 U.S.C. 553 do not apply. I do not believe that either general notice of proposed rule making and public participation therein or delay in effective date would serve a useful purpose here. Accordingly, these rules shall be effective immediately.

1. The new § 860.50 reads as follows:

§ 860.50 "Compensation, terms, conditions, or privileges of employment * * *".

(a) Section 4(a)(1) of the Act specifies that it is unlawful for an employer "to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;"

(b) The term "compensation" includes all types and methods of remuneration paid to or on behalf of or received by an employee for his employment.

(c) The phrase "terms, conditions, or privileges of employment" encompasses a wide and varied range of job-related factors including, but not limited to, job security, advancement, status, and benefits. The following are examples of some of the more common terms, conditions, or privileges of employment: The many and varied employee advantages generally regarded as being within the phrase "fringe benefits," promotion, demotion or other disciplinary action, hours of work (including overtime), leave policy (including sick leave, vacation, holidays), career development programs, and seniority or merit systems (which govern such conditions as transfer, assignment, job retention, layoff and recall). An employer will be deemed to have violated the Act if he discriminates against any individual within its protection because of age with respect to any terms, conditions, or privileges of employment, such as the above, unless a statutory exception applies.

2. The new § 860.95 reads as follows:

§ 860.95 Job applications.

The term "job applications", within the meaning of the recordkeeping regulations under the Act (Part 850 of this chapter), refers to all inquiries about employment or applications for employment or promotion including, but not limited to, résumés or other summaries of the applicant's background. It relates not only to preemployment inquiries but to inquiries by employees concerning terms, conditions, or privileges of employment as specified in section 4 of the statute. As in the case with help wanted notices or advertisements (see § 860.92), a request on the part of an employer, employment agency, or labor organization for information such as "Date of Birth" or "State Age" on an employment application form is not, in itself, a violation of the Age Discrimination in Employment Act of 1967. But because the request that an applicant state his age may tend to deter older applicants or otherwise indicate a discrimination based on age, employment application forms which request such information in the above, or any similar phrase, will be closely scrutinized to assure that the request is for a permissible purpose and not for purposes proscribed by the statute. That the purpose is not one proscribed by the statute should be made known to the applicant, as by a reference on the application form to the statutory prohibition in language to the following effect: "The Age Discrimination in Employment Act of 1967 prohibits discrimination on the basis of age with respect to individuals who are at least 40 but less than 65 years of age."

3. The new § 860.105 reads as follows:

§ 860.105 Bona fide seniority systems.

Section 4(f)(2) of the Act provides that "It shall not be unlawful for an employer, employment agency, or labor organization * * * to observe the terms of a bona fide seniority system * * * which is not a subterfuge to evade the purposes of this Act * * *."

(a) Though a seniority system may be qualified by such factors as merit, capacity, or ability, any bona fide seniority system must be based on length of service as the primary criterion for the equitable allocation of available employment opportunities and prerogatives among younger and older workers. In this regard it should be noted that a bona fide seniority system may operate, for example, on an occupational, departmental, plant, or company wide unit basis.

(b) Seniority systems not only distinguish between employees on the basis of their length of service, they normally afford greater rights to those who have the longer service. Therefore, adoption of a purported seniority system which gives those with longer service lesser rights, and results in discharge or less favored treatment to those within the protection of the Act, may, depending upon the circumstances, be a "subterfuge to evade the purposes" of the Act. Furthermore, a seniority system which has the effect of perpetuating discrimination which may have existed on the basis of age prior to the effective date of the Act will not be recognized as "bona fide."

(c) Unless the essential terms and conditions of an alleged seniority system have been communicated to the affected employees and can be shown to be applied uniformly to all of those affected, regardless of age, it will also be regarded as lacking the necessary bona fides to qualify for the exception.

(d) It should be noted that seniority systems which segregate, classify, or otherwise discriminate against individuals on the basis of race, color, religion, sex, or national origin, are prohibited under Title VII of the Civil Rights Act of 1964, where that Act otherwise applies. Neither will such systems be regarded as "bona fide" within the meaning of section 4(f)(2) of the Age Discrimination in Employment Act of 1967.

4. The new § 860.110 reads as follows:

§ 860.110 Involuntary retirement before age 65.

Section 4(f)(2) of the Act provides that "It shall not be unlawful for an employer, employment agency, or labor organization * * * to observe the terms of * * * any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual * * *." Thus, the Act authorizes involuntary retirement irrespective of age, provided that such retirement is pursuant to the terms of a retirement or pen-

sion plan meeting the requirements of section 4(f)(2). It should, however, be noted in this connection that section 5 of the Act directs the Secretary of Labor to undertake an appropriate study of institutional and other arrangements giving rise to involuntary retirement, and report his findings and any appropriate legislative recommendations to the President and to the Congress.

(81 Stat. 602; 29 U.S.C. 620. Secretary's Order No. 10–68, 33 F.R. 9729; Secretary's Order No. 11–68, 33 F.R. 9690)

Signed at Washington, D.C., this 27th day of August 1968.

CLARENCE T. LUNDQUIST,
Administrator.

[F.R. Doc. 68–10519; Filed, Aug. 29, 1968; 8:50 a.m.]

1/9/69

D-1213

U.S. DEPARTMENT OF LABOR
WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS

PART 860–INTERPRETATIONS

Miscellaneous Amendments

(Reprint from the Federal Register of January 9, 1969)

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

SUBCHAPTER C—AGE DISCRIMINATION IN EMPLOYMENT

PART 860—INTERPRETATIONS

Miscellaneous Amendments

Pursuant to the Age Discrimination in Employment Act of 1967 (81 Stat. 602; 29 U.S.C. 620) and Secretary's Orders No. 10–68 (33 F.R. 9729) and No. 11–68 (33 F.R. 9690), 29 CFR Part 860 is hereby amended by revising § 860.110, and by adding new §§ 860.20, 860.75, 860.104, 860.106, and 860.120 to read as set forth below.

As these are interpretive rules and are not substantive, the provisions of 5 U.S.C. 553 concerning notice of proposed rule making, public participation therein, and delayed effectiveness of substantive rules, do not apply. I do not believe such procedure and delay will serve a useful purpose here. Accordingly, these rules shall be effective immediately.

1. The revised § 860.110 reads as follows:

§ 860.110 Involuntary retirement before age 65.

Section 4(f)(2) of the Act provides that "It shall not be unlawful for an employer, employment agency, or labor organization * * * to observe the terms of * * * any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual * * *." Thus, the Act authorizes involuntary retirement irrespective of age, provided that such retirement is pursuant to the terms of a retirement or pension plan meeting the requirements of section 4(f)(2). This exception does not apply to the involuntary retirement before 65 of employees who are not participants in the employer's retirement or pension program. It should be noted that section 5 of the Act directs the Secretary of Labor to undertake an appropriate study of institutional and other arrangements giving rise to involuntary retirement, and report his findings and any appropriate legislative recommendations to the President and to Congress.

2. The new § 860.20 reads as follows:

§ 860.20 Geographical scope of coverage.

The prohibitions in section 4 of the Act are considered to apply only to performance of the described discriminatory acts in places over which the United States has sovereignty, territorial jurisdiction, or legislative control. These include principally the geographical areas set forth in the definition of the term "State" in section 11(i). There, the term State is defined to include "a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act." Activities within such geographical areas which are discriminatory against protected individuals or employees are within the scope of the Act even though the activities are related to employment outside of such geographical areas.

3. The new § 860.75 reads as follows:

§ 860.75 Wage rate reduction prohibited.

Section 4(a)(3) of the Act provides that where an age-based wage differential is paid in violation of the statute, the employer cannot correct the violation by reducing the wage rate of any employee. Thus, for example, in a situation where it has been determined that an employer has violated the Act by paying a 62-year-old employee a prohibited wage differential of 50 cents an hour less than he is paying a 30-year-old worker, in order to achieve compliance with the Act he must raise the wage rate of the older employee to equal that of the younger worker. Furthermore, the employer's obligation to comply with the statute cannot be avoided by transferring either the older or the younger employee to other work since the transfer itself would appear discriminatory under the particular facts and circumstances.

4. The new § 860.104 reads as follows:

§ 860.104 Differentiations based on reasonable factors other than age—Additional examples.

(a) *Employment of Social Security recipients.* (1) It is considered discriminatory for an employer to specify that he will hire only persons receiving old age Social Security insurance benefits. Such a specification could result in discrimination against other individuals within the age group covered by the Act willing to work under the wages and other conditions of employment involved, even though those wages and conditions may be peculiarly attractive to Social Security recipients. Similarly, the specification of Social Security recipients cannot be used as a convenient reference to persons of sufficient age to be eligible for old age benefits. Thus, where two persons apply for a job, one age 56, and the other age 62 and re-

ceiving Social Security benefits, the employer may not lawfully give preference in hiring to the older individual solely because he is receiving such benefits.

(2) Where a job applicant under age 65 is unwilling to accept the number or schedule of hours required by an employer as a condition for a particular job, because he is receiving Social Security benefits and is limited in the amount of wages he may earn without losing such benefits, failure to employ him would not violate the Act. An employer's condition as to the number or schedule of hours may be "a reasonable factor other than age" on which to base a differentiation.

(b) *Employee testing.* The use of a validated employee test is not, of itself, a violation of the Act when such test is specifically related to the requirements of the job, is fair and reasonable, is administered in good faith and without discrimination on the basis of age, and is properly evaluated. A vital factor in employee testing as it relates to the 40–65-age group protected by the statute is the "test-sophistication" or "test-wiseness" of the individual. Younger persons, due to the tremendous increase in the use of tests in primary and secondary schools in recent years, may generally have had more experience in test-taking than older individuals and, consequently, where an employee test is used as the sole tool or the controlling factor in the employee selection procedure, such younger persons may have an advantage over older applicants who may have had considerable on-the-job experience but who due to age, are further removed from their schooling. Therefore, situations in which an employee test is used as the sole tool or the controlling factor in the employee selection procedure will be carefully scrutinized to ensure that the test is for a permissible purpose and not for purposes prohibited by the statute.

5. The new § 860.106 reads as follows:

§ 860.106 Bona fide apprenticeship programs.

Age limitations for entry into bona fide apprenticeship programs were not intended to be affected by the Act. Entry into most apprenticeship programs has traditionally been limited to youths under specified ages. This is in recognition of the fact that apprenticeship is an extension of the educational process to prepare young men and women for skilled employment. Accordingly, the prohibitions contained in the Act will not be applied to bona fide apprenticeship programs which meet the standards specified in §§ 521.2 and 521.3 of this chapter.

6. The new § 860.120 reads as follows:

§860.120 Costs and benefits under employee benefit plans.

Section 4(f)(2) of the Act provides that it is not unlawful for an employer, employment agency, or labor organization "to observe the terms of * * * any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual * * *" Thus, an employer is not required to provide older workers who are otherwise protected by the law with the same pension, retirement or insurance benefits as he provides to younger workers, so long as any differential between them is in accordance with the terms of a bona fide benefit plan. For example, an employer may provide lesser amounts of insurance coverage under a group insurance plan to older workers than he does to younger workers, where the plan is not a subterfuge to evade the purpose of the Act. A retirement, pension or insurance plan will be considered in compliance with the statute where the actual amount of payment made, or cost incurred, in behalf of an older worker is equal to that made or incurred in behalf of a younger worker, even though the older worker may thereby receive a lesser amount of pension or retirement benefits, or insurance coverage.

(81 Stat. 602; 29 U.S.C. 620. Secretary's Order No. 10–68, 33 F.R. 9729; Secretary's Order No. 11–68, 33 F.R. 9690)

Signed at Washington, D.C., this 3d day of January 1969.

CLARENCE T. LUNDQUIST,
Administrator, Wage and Hour and Public Contracts Divisions.

[F.R. Doc. 69–280; Filed, Jan. 8, 1969; 8:48 a.m.]

U.S. DEPARTMENT OF LABOR
WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS

PART 860 (29 CFR) – INTERPRETATIONS

(Reprinted from the Federal Register of June 21, 1969)

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

SUBCHAPTER C—AGE DISCRIMINATION IN EMPLOYMENT

PART 860—INTERPRETATIONS

Miscellaneous Amendments

Pursuant to the Age Discrimination in Employment Act of 1967 (81 Stat. 602; 29 U.S.C. 620) and Secretary's Orders No. 10–68 (33 F.R. 9729) and No. 11–68 (33 F.R. 9690), 29 CFR Part 860 is amended as set forth below.

As these are interpretive rules and are not substantive, the provisions of 5 U.S.C. 553 concerning notice of proposed rule making, public participation therein, and delay in effective date do not apply. I do not believe such procedure and delay will serve a useful purpose here. Accordingly, these rules shall be effective immediately.

1. A new § 860.30 is added to read as follows:

§ 860.30 Definitions.

Considering the purpose of the proviso to section 7(c) of the Act as indicated in the reports of both the Senate and House Committees (see S. Rept. No. 723, 90th Cong., 1st Sess., and H. Rept. No. 805, 90th Cong., 1st Sess.) it was clearly the intent of Congress that the term "employee" in that proviso should apply to any person who has a right to bring an action under the Act, including an applicant for employment.

2. Paragraph (b) of § 860.92 is revised to read as follows:

§ 860.92 Help wanted notices or advertisements.

* * * * *

(b) When help wanted notices or advertisements contain terms and phrases such as "age 25 to 35," "young," "boy," "girl," "college student," "recent college graduate," or others of a similar nature, such a term or phrase discriminates against the employment of older persons and will be considered in violation of the Act. Such specifications as "age 40 to 50," "age over 50," or "age over 65" are also considered to be prohibited. Where such specifications as "retired person" or "supplement your pension" are intended and applied so as to discriminate against others within the protected group, they too are regarded as prohibited, unless one of the exceptions applies.

3. In § 860.95, the existing language is designated as paragraph (a), and a new paragraph (b) is added to read as follows:

§ 860.95 Job applications.

* * * * *

(b) An employer may limit the active period of consideration of an application so long as he treats all applicants alike regardless of age. Thus, for example, if the employer customarily retains employment applications in an active status for a period of 60 days, he will be in compliance with the Act if he so retains those of individuals in the 40 to 65 age group for an equal period of consideration as those of younger persons. Further, there is no objection to the employer advising all applicants of the above practice by means of a legend on his application forms as long as this does not suggest any limitation based on age. If it develops, however, that such a legend is used as a device to avoid consideration of the applications of older persons, or otherwise discriminate against them because of age, there would then appear to be a violation of the Act. It should be noted that this position in no way alters the recordkeeping requirements of the Act which are set forth in Part 850 of this chapter.

4. In § 860.104, a new paragraph (c) is added to read as follows:

§ 860.104 Differentiations based on reasonable factors other than age—Additional examples.

* * * * *

(c) *Refusal to hire relatives of current employees.* There is no provision in the Act which would prohibit an employer, employment agency, or labor organization from refusing to hire individuals within the protected age group not because of their age but because they are relatives of persons already employed by the firm or organization involved. Such a differentiation would appear to be based on "reasonable factors other than age."

5. Section 860.110 is revised to read as follows:

§ 860.110 Involuntary retirement before age 65.

(a) Section 4(f)(2) of the Act provides that "It shall not be unlawful for an employer, employment agency, or labor organization * * * to observe the terms of * * * any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this

Act, except that no such employee benefit plan shall excuse the failure to hire any individual * * *." Thus, the Act authorizes involuntary retirement irrespective of age, provided that such retirement is pursuant to the terms of a retirement or pension plan meeting the requirements of section 4(f)(2). The fact that an employer may decide to permit certain employees to continue working beyond the age stipulated in the formal retirement program does not, in and of itself, render an otherwise bona fide plan invalid insofar as the exception provided in section 4(f)(2) is concerned.

(b) This exception does not apply to the involuntary retirement before 65 of employees who are not participants in the employer's retirement or pension program. It should be noted that section 5 of the Act directs the Secretary of Labor to undertake an appropriate study of institutional and other arrangements giving rise to involuntary retirement, and report his findings and any appropriate legislative recommendations to the President and to Congress.

6. Section 860.120 is revised to read as follows:

§ 860.120 Costs and benefits under employee benefit plans.

(a) Section 4(f)(2) of the Act provides that it is not unlawful for an employer, employment agency, or labor organization "to observe the terms of * * * any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual * * *." Thus, an employer is not required to provide older workers who are otherwise protected by the law with the same pension, retirement or insurance benefits as he provides to younger workers, so long as any differential between them is in accordance with the terms of a bona fide benefit plan. For example, an employer may provide lesser amounts of insurance coverage under a group insurance plan to older workers than he does to younger workers, where the plan is not a subterfuge to evade the purposes of the Act. A retirement, pension, or insurance plan will be considered in compliance with the statute where the actual amount of payment made, or cost incurred, in behalf of an older worker is equal to that made or incurred in behalf of a younger worker, even though the older worker may thereby receive a lesser amount of pension or retirement benefits, or insurance coverage. Further, an employer may provide varying benefits under a bona fide plan to employees within the age group protected by the Act, when such benefits are determined by a formula involving age and length of service requirements.

(b) Profit-sharing plans: Not all employee benefit plans but only those similar to the kind enumerated in section 4(f)(2) of the Act come within this provision and a profit-sharing plan as such would not appear to be within its terms. However, where it is the essential purpose of a plan financed from profits to provide retirement benefits for employees, the exception may apply. The "bona fides" of such plans will be considered on the basis of all the particular facts and circumstances.

(c) Forfeiture clauses in retirement programs: Clauses in retirement programs which state that litigation or participation in any manner in a formal proceeding by an employee will result in the forfeiture of his rights are unlawful insofar as they may be applied to those who seek redress under the Act. This is by reason of section 4(d) which provides that it "shall be unlawful for an employer to discriminate against any of his employees * * * because such individual * * * has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this Act."

(81 Stat. 602; 29 U.S.C. 629. Secretary's Order No. 10-68, 33 F.R. 9729; Secretary's Order No. 11-68, 33 F.R. 9690)

Signed at Washington, D.C., this 17th day of June 1969.

ROBERT D. MORAN,
Administrator, Wage and Hour and Public Contracts Divisions.

[F.R. Doc. 69-7374; Filed, June 20, 1969; 8:50 a.m.]

GPO 878-099

APPENDIX B

Summary of provisions under State laws pertaining to discrimination in employment because of age, February 1, 1970

State	Coverage			Prohibited practices	Penalties	Enforcement
	Law applies to--	Age limits*	Exclusions and exemptions			
Alaska	Employers, labor organizations, and employment agencies.	None	Nonprofit social, clubs, fraternal, charitable, educational, or religious organizations, associations, or corporations; domestic service.	Employers: to refuse or bar from employment; to discriminate in compensation, terms, conditions or privileges of employment. Employers and employment agencies: to advertise, publish or to use application forms which suggest age limitations. Labor organizations: to exclude, expel or discriminate in any way.	Up to a $500 fine; up to 30 days in jail, or both.	State Commission for Human Rights
California	Employers, State and local governments, employment agencies, and labor organizations.	40 to 64	Employers of less than 6, domestic service, family employment.	To refuse to hire or employ, to discharge, dismiss, reduce, suspend or demote.	Up to a $500 fine; up to 6 months in jail, or both.	Department of Employment
Colorado	Any person conducting business in State.	18 to 60	None	To discharge.	Not less than $100 or more than $250 fine.	Industrial Commission
Connecticut	Employers, State and political subdivisions, employment agencies, and labor organizations.	40 to 66	Employers of less than 3, domestic service, family employment.	Employers: to refuse or bar from employment; to discriminate in compensation, terms, conditions or privileges of employment. Employers and employment agencies: to advertise, publish or use application forms which suggest age limitations. Labor organizations: to exclude, expel or discriminate in any way.	Contempt of court only.	Commission on Human Rights and Opportunities

*Age limits refer to birthdays.

Summary of provisions under State laws pertaining to discrimination in employment because of age, February 1, 1970 (Continued)

State	Coverage			Prohibited practices	Penalties	Enforcement
	Law applies to--	Age limits*	Exclusions and exemptions			
Delaware	Employers, employment agencies, and labor organizations.	45 to 65	None	Employers: to refuse or bar from employment; to discriminate in compensation, terms, conditions, or privileges of employment. Employers and employment agencies: to advertise, publish or use application forms which suggest age limitations. Labor organizations: to exclude, expel or discriminate in any way.	First conviction, up to $200 fine; second conviction, up to $500 fine, up to 90 days in jail or both.	Labor Commission, Division Against Discrimination
Hawaii	Employers, employment agencies, and labor organizations.	None	None	Employers: to refuse or bar from employment; to discriminate in compensation, terms, conditions, or privileges of employment. Employers and employment agencies: to advertise, publish or use application forms which suggest age limitations. Labor organizations: to exclude, expel or discriminate in any way.	First conviction, up to $200 fine; subsequent convictions, up to $500 fine, up to 90 days in jail or both.	State Department of Labor and Industrial Relations
Idaho	Employers	Under 60	None	To refuse to hire, to bar or discharge or to otherwise discriminate, in compensation, hire, tenure, terms, conditions or privileges of employment.	Not less than $100 or more than $500 fine, up to 30 days in jail, or both.	State Commissioner of Labor
Illinois	Employers, governmental units of State, and labor organizations.	Over 45	None	Employers: to refuse or bar from employment; to discriminate in compensation, terms, conditions, or privileges of employment. Employers and employment agencies: to advertise, publish or use application forms which suggest age limitations. Labor organizations: to exclude, expel or discriminate in any way.	Not less than $50 or more than $100 fine.	Fair Employment Practices Commission

*Age limits refer to birthdays.

Summary of provisions under State laws pertaining to discrimination in employment because of age, February 1, 1970 (Continued)

State	Coverage			Prohibited practices	Penalties	Enforcement
	Law applies to--	Age limits*	Exclusions and exemptions			
Indiana	Employers, labor organizations, the State and political subdivisions.	40 to 65	Nonprofit social clubs, fraternal, charitable, educational, or religious organizations, associations or corporations; domestic service; farm labor.	Employers: to dismiss, refuse to employ or rehire. Labor organizations: to deny full and equal membership rights or to fail or refuse to refer for employment.	None	Commissioner of Labor
Louisiana	Employers.	Under 50	Employers of less than 25.	To discharge or reject applications for employment.	Up to $500 fine; up to 90 days in jail, or both.	Department of Labor
Maine	Employers.	None	None	To refuse to hire or employ, to bar, to discharge or otherwise discriminate.	Not less than $100 or more than $250 fine.	Commissioner of Labor and Industry
Maryland	Employers, employment agencies and labor organizations.	18 to 66	None	Employers: to refuse to hire or discharge or otherwise discriminate; to limit, segregate or classify employees to affect status. Employment agencies: to refuse to refer. Labor organizations: to exclude or expel or otherwise discriminate; to limit, segregate or classify; to cause employer to discriminate. All three: to discriminate against persons who complain or assist in complaint; to advertise indicating age preference.	Up to $500 fine; up to one year in jail, or both.	Department of Labor and Industry

*Age limits refer to birthdays.

Summary of provisions under State laws pertaining to discrimination in employment because of age, February 1, 1970 (Continued)

State	Coverage			Prohibited practices	Penalties	Enforcement
	Law applies to--	Age limits*	Exclusions and exemptions			
Massachusetts (1950 law)	Employers, the Commonwealth and political subdivisions, employment agencies, and labor organizations.	40 to 65	Employers of less than 6; nonprofit social clubs; fraternal, charitable, educational, or religious organizations, associations, or corporations; domestic service.	Employers: to refuse or bar from employment; to discriminate in compensation, terms, conditions, or privileges of employment. Employers and employment agencies: to advertise, publish or use application forms which suggest age limitations. Labor organizations: to exclude, expel or discriminate in any way.	Up to $500 fine; up to one year in jail, or both.	Commission Against Discrimination
(1937 law)	Employment contracts.	45 to 65	Private domestic service and farm labor.	Contracts which prevent or tend to prevent employment; to dismiss or refuse to employ.	Not less than $50 or more than $200 fine for discharging any person assisting in enforcement; violators of law shall have their names published throughout the Commonwealth.	Commissioner of Labor and Industries
Michigan	Employers, the State and political subdivisions, employment agencies, and labor organizations.	35 to 60	Employers of less than 8, domestic service.	Employers: to refuse or bar from employment; to discriminate in tenure, terms, conditions, or privileges of employment. Employers and employment agencies: to advertise, publish or use application forms which suggest age limitations. Labor organizations: to exclude, expel or discriminate in any way.	Contempt of court; not less than $100 or more than $500 fine for failure to post required notices.	Civil Rights Commission

*Age limits refer to birthdays.

Summary of provisions under State laws pertaining to discrimination in employment because of age, February 1, 1970 (Continued)

State	Coverage			Prohibited practices	Penalties	Enforcement
	Law applies to--	Age limits*	Exclusions and exemptions			
Montana (Resolution)	Employers.	40 to 65	None	To bar or discharge or otherwise discriminate in terms, conditions or privileges of employment.	None	None
Nebraska	Employment agencies, employers and labor organizations.	Over 40	None	Employers: to refuse or bar from employment; to discriminate in compensation, terms, conditions, or privileges of employment; to utilize any source of labor which so discriminates. Labor organizations: to exclude, expel or discriminate in any way.	Up to $10 fine.	Equal Employment Opportunity Commission
New Jersey	Employers, employment agencies, and labor organizations.	Over 21	Nonprofit social clubs, fraternal, charitable, educational, or religious organizations, associations, or corporations; domestic service, family employment.	Employers: to refuse or bar from employment; to discriminate in compensation, terms, conditions, or privileges of employment. Employers and employment agencies: to advertise, publish or use application forms which suggest age limitations. Labor organizations: to exclude, expel or discriminate in any way.	Up to $500 fine, up to one year in jail, or both.	Division on Civil Rights
New Mexico	Employers.	Over 18	Employers of less than 4.	To refuse to hire, to discharge, to promote or demote, or to discriminate in matters of compensation against persons otherwise qualified.	Up to $1,000 in damages.	Commission on Human Rights

*Age limits refer to birthdays.

Summary of provisions under State laws pertaining to discrimination in employment because of age, February 1, 1970 (Continued)

State	Coverage			Prohibited practices	Penalties	Enforcement
	Law applies to--	Age limits*	Exclusions and exemptions			
New York	Employers, employment agencies, and labor organizations.	40 to 65	Employers of less than 4; domestic service, and family employment.	Employers: to refuse or bar from employment; to discriminate in compensation, terms, conditions, or privileges of employment. Employers and employment agencies: to advertise, publish or use application forms which suggest age limitations. Labor organizations: to exclude, expel or discriminate in any way.	Up to $500 fine; up to one year in jail, or both.	Commission for Human Rights
North Dakota	Employer.	40 to 65	None	To refuse to hire, employ, or license; to bar or discharge.	Up to $25 fine; up to one day in jail, or both.	Department of Labor
Ohio	Employers.	40 to 65	None	To refuse opportunity for interview; to discharge.	None	Department of Labor
Oregon	Employers, public employment, employment agencies, and labor organizations.	25 to 65	Nonprofit social clubs, fraternal, charitable, educational or religious organizations, associations, or corporations; domestic service, family employment, various enforcement agencies, firefighters and weighmasters.	Employers: to refuse or bar from employment; to discriminate in compensation, terms, conditions, or privileges of employment. Employers and employment agencies: to advertise, publish or use application forms which suggest age limitations. Labor organizations: to exclude, expel or discriminate in any way.	Up to $500 fine; up to one year in jail, or both.	Commissioner, Bureau of Labor

*Age limits refer to birthdays.

Summary of provisions under State laws pertaining to discrimination in employment because of age, February 1, 1970 (Continued)

State	Coverage			Prohibited practices	Penalties	Enforcement
	Law applies to--	Age limits*	Exclusions and exemptions			
Pennsylvania	Employers, State and political subdivisions, employment agencies, and labor organizations.	40 to 63	Employers of less than 4; domestic service; religious, fraternal, charitable, or sectarian corporations, or associations except those receiving government aid, agricultural workers, family employment.	Employers: to refuse or bar from employment; to discriminate in compensation, terms, conditions, or privileges of employment. Employers and employment agencies: to advertise, publish or use application forms which suggest age limitations. Labor organizations: to exclude, expel or discriminate in any way.	Not less than $100 or more than $500 fine, not more than 30 days in jail, or both.	Human Relations Commission
Puerto Rico	Employers, agencies and instrumentalities of the Commonwealth operated as private businesses or enterprises; labor organizations.	30 to 65	None	Employers: to refuse or bar from employment; to discriminate in compensation, terms, conditions, or privileges of employment; to advertise, publish or use application forms which suggest age limitations. Labor organizations: to exclude, expel or discriminate in any way.	Various civil and criminal penalties including double damages, up to $1,000 fine, 30 to 90 days in jail.	Department of Labor
Rhode Island	Employers, State and political subdivisions, employment agencies, and labor organizations.	45 to 65	Nonprofit social clubs; fraternal, charitable, educational or religious organizations, associations; or corporations; domestic service; farm labor.	Employers: to refuse or bar from employment; to discriminate in compensation, terms, conditions, or privileges of employment. Employers and employment agencies: to advertise, publish or use application forms which suggest age limitations. Labor organizations: to exclude, expel or discriminate in any way.	Contempt of court.	Director of Labor

*Age limits refer to birthdays.

Summary of provisions under State laws pertaining to discrimination in employment because of age, February 1, 1970 (Concluded)

State	Coverage			Prohibited practices	Penalties	Enforcement
	Law applies to--	Age limits*	Exclusions and exemptions			
Texas	State and political subdivisions.	21 to 65	Law enforcement, peace officers and fire fighters.	To deny employment.	None	Individual agencies.
Washington	Employers, State and political subdivisions, employment agencies and labor organizations.	40 to 65	Employers of less than 8; nonprofit social clubs; fraternal, charitable, educational, religious organizations, associations, or corporations; domestic service, family employment.	Employers: to refuse or bar from employment; to discriminate in promotion, compensation, terms, conditions, or privileges of employment. Employers and employment agencies: to advertise, publish or use application forms which suggest age limitations. Labor organizations: to exclude, expel or discriminate in any way.	Misdemeanor	State Board Against Discrimination
Wisconsin	Employers, employment agencies, and labor organizations.	40 to 65	Nonprofit social clubs; fraternal, charitable, educational, religious organizations, or corporations; family employment; hazardous occupations, law enforcement or fire fighting.	Employers: to refuse or bar from employment; to discriminate in compensation, terms, conditions, or privileges of employment. Employers and employment agencies: to advertise, publish or use application forms which suggest age limitations. Labor organizations: to exclude, expel or discriminate in any way.	Persons aggrieved by noncompliance entitled to have law enforced by suit in equity.	State Industrial Commission, Fair Employment Practices Division

*Age limits refer to birthdays.

GPO 888-555